United Nations S/AC.44/2004/(02)/48

Security Council

Distr.: General
15 November 2004

Original: English

Security Council Committee established pursuant to resolution 1540 (2004)

Letter dated 28 October 2004 from the Permanent Representative of the Netherlands to the United Nations addressed to the Chairman of the Committee

On behalf of the Government of the Netherlands in its capacity as Presidency of the European Union, I have the honour to submit the European Union common report on Security Council resolution 1540 (2004) (see annex). The report covers areas of EU and European Community competencies and activities in relation to Security Council resolution 1540 (2004) and should be read in conjunction with the national reports of the member States of the European Union.

(*Signed*) Dirk Jan **van den Berg**
Ambassador
Permanent Representative

04-61148 (E) 081204

Annex to the letter dated 28 October 2004 from the Permanent Representative of the Netherlands to the United Nations addressed to the Chairman of the Committee

European Union report on the implementation of Security Council resolution 1540 (2004)

Table of content:

I. Introduction - page 4

II. Overview of the European Union policies and activities in the fields covered by the UNSCR 1540 - page 4

III. Comments in relation to the specific European Community issues raised by the UNSCR 1540 - page 6

III.1) General remarks on the scope of UNSCR 1540 – page 6
PARA 2 of UNSCR 1540

III.2) Accounting and security of production, use, storage and transport of WMD related materials within the EU – page 7
PARA 3(a) of UNSCR 1540

III.2)a) Nuclear material – page 7
i) Safeguards
ii) Sealed Sources
iii) Transport
III.2)b) Biological material – page 9
i) Public health aspects
ii) Control of pathogenic agents
III.2)c) Dangerous goods – page 10
i) General remarks
ii) Legal regime for rail and road transport

III.3) Physical Protection of nuclear material – page 12
PARA 3(b) of UNSCR 1540

III.3)a) International legislation
III.3)b) National legislations

III.4) Community customs regimes for import/export at the borders of the EU
PARA 3(c) of UNSCR 1540 – page 12

III.4)a) Community regime on import/export from/to the EU
III.4)b) Community customs regime for the control of exports of dual use items
III.4)c) Community regime for circulation of dual use items within the Community

III.5) Link between the EU Dual Use Export Control Regulation 1334/2000 and the UNSCR 1540 – page 14
PARA 3(d) – PARA 6 – PARA 8(d) of UNSCR 1540

I. Introduction

This report has been prepared by the Presidency of the European Union (EU), assisted by the High Representative for the Common Foreign and Security Policy, in full association with the European Commission. It presents the areas where the EU has developed a common approach to tackle the issues of the UNSCR 1540. In particular, those issues related to the areas of European Community competences are mentioned in part III of this report, drafted by the European Commission Services. The national reports of the EU Member States may specifically refer to this report for those issues of Community competence.

Ii. Overview of EU policies and activities in fields covered by the UNSCR 1540.

1. On 12 December 2003, the European Council adopted its European Union Strategy against the proliferation of weapons of mass destruction. The Strategy recognises that non proliferation, disarmament and arms control policy can make an essential contribution in the global fight against terrorism by reducing the risk of non state actors gaining access to weapons of mass destruction, radioactive materials, and means of delivery. The Strategy recalls in this context the European Council conclusions of 10 December 2001 on the implications of the terrorist threat on non-proliferation, disarmament and arms control policy of the European Union.

The Strategy implies that the EU must seek an effective multilateralist response to the new threat posed by terrorism and weapons of mass destruction. The EU approach is guided by:

- the conviction that a multilateral approach to security, including disarmament and non-proliferation, provides the best way to maintain international order and hence our commitment to uphold, implement and strengthen the multilateral disarmament and non-proliferation treaties and agreements;
- the conviction that non-proliferation should be mainstreamed in our overall policies, drawing upon all resources and instruments available to the EU;
- the determination to support the multilateral institutions charged respectively with verification and upholding of compliance with these treaties;
- the view that increased efforts is needed to enhance consequence management capabilities and improve coordination;
- the commitment to strong national and internationally-coordinated export controls of on dual use items;
- the conviction that the EU in pursuing effective non-proliferation should be forceful and inclusive and needs to actively contribute to international stability;
- the commitment to co-operate with partners who share the same objectives.

At the same time, the EU continues to address the root causes of instability including through pursuing and enhancing its efforts in the areas of political conflicts, development assistance, reduction of poverty and promotion of human rights.

2. Effective multilateralism is the cornerstone of the EU Strategy for combating the proliferation of WMD.
The EU is committed to the multilateral treaty system, which provides the legal and normative basis for all non-proliferation efforts. The EU policy is to pursue the implementation and universalisation of the existing disarmament and non-proliferation norms. A Common Position (2003/805/CFSP) on "the universalisation and reinforcement of multilateral agreements in the field of non proliferation of WMD and their means of delivery" was adopted by the European Council of 17 November 2003. To that end, the EU will pursue the universalisation of the NPT, the IAEA Safeguard agreements and protocols additional to them, the CWC, the BTWC, the HCOC, and the early entry into force of the CTBT. The EU policy is to work towards obtaining that the bans on biological and chemical weapons become universally binding rules of international law. The EU policy is to pursue an international agreement on the prohibition of the production of fissile material for nuclear weapons or other nuclear explosive devices. The EU will assist third countries in the fulfilment of their obligations under multilateral conventions and regimes.

If the multilateral treaty regime is to remain credible it must be made more effective. The EU places particular emphasis on a policy of reinforcing compliance with the multilateral treaty regime. Such a policy must be geared towards enhancing the detectability of significant violations and strengthening enforcement of the prohibitions and norms established by the multilateral treaty regime, including by providing for criminalisation of violations committed under the jurisdiction or control of a State. The role of the UN Security Council, as the final arbiter on the consequence of non-compliance – as foreseen in multilateral regimes – needs to be effectively strengthened.

To ensure effective detectability of violations and to deter non-compliance the EU makes best use of, and seeks improvements to, existing verification mechanisms and systems. It also supports the establishment of additional international verification instruments and, if necessary, the use of non-routine inspections under international control beyond facilities declared under existing treaty regimes. The EU is prepared to enhance, as appropriate, its political, financial and technical support for agencies in charge of verification.

3. The European Union is committed to strengthening Export Control policies and practices within its border and beyond, in coordination with partners. The Strategy aims at strengthening the Community export control regime and recommends a peer review of Member States' implementation of export controls of dual use items relevant for WMD production. The peer review has recently been finalised and will lead to concrete recommendations to improve export controls within the EU. The EU Strategy also aims at strengthening existing international export control regimes, ia by supporting the membership of all its new Member States in these regimes. Finally, the EU also advocates adherence to effective export control by all countries, including the ones, which are outside the existing regimes and arrangements.

4. The European Union issued a Statement supporting the activities taking place in the frame of the Proliferation Security Initiative. European Union Council Secretariat and European Commission representatives, next to representatives of Member States, participate in some of the meetings and exercises, on an ad-hoc basis, as appropriate.

5. The EU is a long-standing provider of assistance directly or indirectly related to cooperative threat reduction. In particular one could mention the European Community contribution made in 2002 to the G8 Global Partnership. 1 Billion Euro has been committed over a period of 10 years. Projects are ongoing to enhance nuclear safety and security, chemical weapons destruction, the re-employment of former scientists, export control and border security. The European Commission is preparing the budget requests to allow the long term fulfilment of the 10 years commitment. In addition to the contribution to the G8 Global Partnership, the European Council has taken decisions to support the work of the international compliance verification organisations: the IAEA, by fostering projects to be run in the frame of the Nuclear Security Fund, and the OPCW, by supporting its activities fostering CWC States Parties, in need of technical assistance to implement their commitments.

6. On the 17 November 2003, the European Council decided to include WMD provisions into future Agreements with third countries. This is in line with the principle of mainstreaming EU non-proliferation policies into EU's wider relations with third countries. The clause requests the full compliance with and national implementation of existing obligations taken by parties under multilateral frameworks. The clause also fosters steps for further adherence to other relevant international instruments, and insists on the need to develop and effectively enforce national export control systems, controlling export as well as transit of WMD related goods, including a WMD end-use control on dual use technologies and containing effective sanctions for breaches. The WMD clause has been inserted in two recently signed Agreements with third countries and negotiations are proceeding with other countries or regional entities.

III. Comments in relation to the specific European Community issues raised by the UNSCR 1540.

This section of the report, prepared by the European Commission, focuses mainly on the existing Community legislative framework. Community competences are affected in a number of areas (in particular, in paragraph 3 of the resolution). No focus has been made on the Community cooperation in the field of Civil Protection (1), as its purpose is to react in the event of a disaster, instead of focusing on prevention.

The aim is therefore to clarify which aspects of UNSCR 1540 are already covered by or are affecting existing Community instruments and help define where further steps, at national or international level, are taken or needed to ensure full compliance with UNSCR 1540.

III.1) General remarks on the scope of UNSCR 1540

UNSCR 1540 defines general principles and effective measures to prevent the proliferation of nuclear, chemical and biological weapons as well as their means of delivery. The implementation of the Resolution and the further work of the "Committee 1540" would gain from a common definition of a number of concepts such as "WMD related items", "transit", "brokering" and "transhipment". For the purpose of this paper, WMD and related materials are understood to cover the range of weapons, materials, equipment and technologies, including of dual use nature, which might be used by states or non-state actors to inflict mass destruction or disruption. Within the EU, dual use items are defined in

Article 1 of the Council Regulation (EC) 1334/2000 as "items, including software and technology, which can be used for both civil and military purposes, and shall include all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices. It would be critical that the 1540 Committee agrees on the definition of items to be controlled under effective national export control policies.

Although **paragraph 2 of UNSCR 1540** refers to WMD related issues such as terrorism, this report does not focus specifically on terrorism: it should nevertheless be remembered that Article 1(f) of the EU Framework Decision on Terrorism of 13 June 2002 already provides that "manufacture, possession, acquisition, transport, supply or use of weapons, explosives or of nuclear, biological or chemical weapons, as well as research into, and development of, biological and chemical weapons" must be deemed as terrorist offences when committed with a terrorist intent as provided in the Framework Decision. Article 4 of the Framework Decision also covers, in principle, inciting, aiding or abetting and attempting these behaviours.

Paragraph 2 of UNSCR 1540 also refers to the need to adopt and enforce appropriate laws which prohibit any non-State actor from financing manufacture, acquisition etc of WMD, in particular for terrorist purposes. Following the adoption of the Declaration on Combating Terrorism at the European Council of 25/26 March 2004, which contained as a high level strategic objective the need to "reduce the access of terrorists to financial and other economic resources", the Commission adopted a Communication on the fight against terrorism, including financing of terrorism on 29 March 2004. This Communication proposed a range of new measures to improve the exchange of information to combat terrorism and terrorist financing, including the proposal that each Member State be equipped with systems for registering bank accounts which would facilitate the gathering of evidence, especially where financing of terrorism was suspected. Responding to the detailed proposals for further developing the EU fight against the financing of terrorism, as contained in the 'EU Plan of Action on Combating Terrorism' (2) the Commission adopted a further Communication on 'Prevention of and the Fight against Terrorist Financing' on 20 October 2004. This Communication focuses on the need to enhance information exchange among relevant actors at national, EU and international levels; to improve traceability of financial transactions; and to promote transparency within the non-profit/charitable sector.

III.2) Accounting and security of production, use, storage and transport of WMD related materials within the European Union

Paragraph 3 (a) of UNSCR 1540: *"Develop and maintain appropriate effective measures to account for and secure such items in production, use, storage or transport"*

a) Nuclear material

Within the EU, nuclear material is subject to accountancy controls, physical protection, notification of shipments and protection of information related to their movements. The development and

maintenance of effective measures to account for nuclear materials is Community competence under the Euratom Treaty Chapter VII, safeguards.

i) Safeguards: The Euratom Treaty gives the Community extensive powers to control the movements of nuclear materials within the Union, although the control is done in most case a posteriori.

To foster the entry into force of the Strengthened Safeguards System, the Community and the MS have signed Additional Protocols with the IAEA that foresee a wider range of controls to ensure the absence of undeclared nuclear material and activities in nuclear or non nuclear facilities suspected of engaging in activities which could potentially involve the manufacturing of components (whether nuclear material or otherwise) for nuclear weapons.

Under the Safeguards Agreement (INFCIRC 193) between EURATOM, the EU Non Nuclear Weapons States and the IAEA, the Commission collects all nuclear material accountancy information from the EU installations and submits them in a consolidated form to the IAEA. The Commission and the IAEA perform, in co-operation, Safeguards Inspections in the EU, following the arrangement between the Commission and the IAEA. As of the 30 April 2004, the Additional Protocol to the Safeguards Agreement with the IAEA applies to the MS and the Community. Safeguards are now applied following also INFCIRC 540.

Similar Agreements exist between the Community, the IAEA, and France and the UK respectively. In these States all civil nuclear material is subject to Euratom Safeguards and the Commission performs relevant inspections. The IAEA however only inspects selected facilities on the basis of so called voluntary offers.

ii) Sealed sources: The Directive on sealed sources requires MS to control the movements of high activity sources. On 22 December 2003, the European Council adopted a Directive on the control of high activity sealed radioactive sources (Council Directive 2003/122/EURATOM). EU Member States have until 31 December 2005 to transpose the Directive into their national legislation. The purpose of this Directive is to prevent exposure to ionising radiation arising from inadequate control of high activity sealed radioactive sources and to harmonise controls in place in the Member States by setting out specific requirements ensuring that each such source is kept under control. The obligations resulting from this Directive supplement those set out in Directive 96/29/EURATOM. According to the Directive, Member States shall require prior authorisation for any practice involving a high activity source and shall ensure that, before issuing an authorisation, arrangements have been made for the safe management of high activity sources. In particular, financial provision should be made for the safe management of high activity sources when they become disused sources. Requirements on tracking, identification and marking of sources, and training of users are also regulated. Specific mention is made of orphan sources for which special attention is required by the competent authorities.

iii) Transport: The shipment directive 92/3 EURATOM provides for the prior notification and approval in case of shipments of radioactive waste and spent fuel (if declared waste) between MS and in case of imports into or exports out of the Community. A proposal to amend Council Directive

92/3/Euratom on the supervision and control of shipments of radioactive waste between Member States and into and out of the Community is being prepared.

Article 77 (b) of the EURATOM Treaty also assigns to the Commission the responsibility to assure that agreements concluded by the Community with third states or international organisations are complied with. Under the Co-operation agreements with the USA, Australia and Canada mechanisms have been installed for notification and approval by prior consent of nuclear material transfers between the EU and those States.

b) Biological materials

i) Public health aspects: EC activities in this area are focusing on health threats, i.e. strengthening EU public health mechanisms and capacities to identify, to verify and to respond to threats, and to strengthen the regular public health activities, in a complementary assistance to those authorities competent for terrorism and non-proliferation purposes.

Balance needs to be preserved between thorough security measure taking and the requirements for public health. It is felt that there is a need to ensure that the "domestic controls" will not hamper diagnostic needs and means or surveillance and epidemiological activities as well as outbreak controls and response.

A Health Security Committee of high-level Member State representatives was established in November 2001 and charged with exchanging information on health-related threats, sharing information and experience on preparedness and response plans and crisis management strategies, communicating rapidly in case of health-related crises, advising on preparedness and response as well as on co-ordination of emergency planning at EU-level, sharing and co-ordinating health-related crisis responses by Member States and the Commission and facilitating and supporting co-ordination and cooperation efforts and initiatives undertaken at EU-level.

A programme of co-operation in the EU on preparedness and response to biological and chemical agent attacks (health security) was drawn up in December 2001, code-named BICHAT, comprising 25 actions grouped under four objectives:

(a) Set up a mechanism for information exchange, consultation and co-ordination for the handling of health –related issues related to attacks;

(b) Create an EU-wide capability for the timely detection and identification of biological and chemical agents that might be used in attacks and for the rapid and reliable determination and diagnosis of relevant cases;

(c) Create a medicines stock and health services database and a stand-by facility for making medicines and health care specialists available in cases of suspected or unfolding attacks;

(d) Draw-up rules and disseminate guidance on facing-up to attacks from the health point of view and co-ordinating the EU response and links with third countries and international organisations.

ii) Control of pathogenic agents: A distinction may have to be made here between biosafety and biosecurity. Biosafety can be seen as the protection of workers and other persons in relation to the operation of laboratories and other installations where biological agents are stored or used, as well as the protection against the uncontrolled or adventitious spread of pathogens or diseases outside such installations. Biosecurity can be seen as the measures to avoid malevolent actions to spread pathogens or diseases to the outside. Concerning biosafety, there are European Community directives in the area of occupational health and safety, notably directives 89/391/EC on improvements of health and safety at work, 89/656/EC on personal protective equipment, 98/24/EC on the protection of workers from the risks related to chemical agents and 2000/54/EC on the protection of workers from the risks related to biological agents. These directives have introduced, strict obligations in respect of the possession, storage, handling and use of these agents in all workplaces, including laboratories, research and academic institutions, hospitals etc. They also require appropriate qualifications and registering of those involved in all of the above operations, an aspect, which relates to biosecurity aspects. Strict conditions and safeguards apply also in the food safety and veterinary and plant health sectors. European Standards EN 12128, 12738, 12740 and 12741 define, respectively, containment levels, guidance for containment, handling of wastes and guidance for the operation of laboratories. Concerning other aspects of biosecurity, the responsibility for measures lies with the Member States of the EU.

c) Dangerous goods (including chemicals, biological and radioactive materials)

i) General remarks: Dangerous goods are defined and categorised in a document of the United Nations, the 'Recommendations on the transport of dangerous goods', better known as the Orange Book. These recommendations constitute a reference for the various modal agreements for road, rail, inland waterways, sea and air transport.

At this stage they become binding on the parties to the agreements but before coming into force they generally still have to be implemented into national regulations. All EU Member States are parties to the ICAO, ADR (with the exception of Ireland), RID and IMO agreements. Security measures for so-called "high consequence dangerous goods" have been introduced in the latest revision of these modes and will soon enter into force at different dates (in January 2005 for ADR for example).

While the Recommendations on the transport of dangerous goods are drawn up within the UN system and transposed into the national legislation of each country, the European Commission must ensure that these provisions are in conformity with various EU legislations and that they facilitate the functioning of the internal market. Title V of the EC Treaty on the common transport policy also gives the Community certain responsibilities in the transport of dangerous goods.

There are nine classes of dangerous goods according to their characteristics, such as inflammable, explosives, poisonous, infectious, radioactive substances, etc. Recently the UN has started the implementation of the Globally Harmonised System of Classification and Labelling of Chemicals (GHS) in order to make one uniform approach for the various existing classification systems.

In addition to the regulations of international origin, national authorities or the EC may have additional requirements. In particular for the notification of shipments, Council directive 93/75 EEC concerning minimum requirements for vessels bound for or leaving a port in a Member State and carrying dangerous goods constrains the operator of such vessels to notify before departure the competent authority of that Member State about the destination, the intended route and the nature of the dangerous goods transported.

EC activities are also focusing on the need to ensure the protection of public health, in particular the health of workers handling dangerous substances. This resulted in the adoption of Directive 67/548/EEC in 1967 to approximate the national provisions relating to dangerous substances. The Directive introduced common provisions on the classification of dangerous substances, since placing a substance into one or several defined classes of danger characterises the type and severity of the adverse effects that the substance can cause; packaging of dangerous substances, since adequate packaging protects from the known danger(s) of a substance; labelling of dangerous substances, since the label on the packaging informs about the nature of the danger(s) of the substance inside and about the safety measures to apply during handling and use. The Directive is permanently updated to take account of the scientific and technical progress in the field of dangerous substances. Until February 2003, it has been amended 9 times and adapted to technical progress 28 times.

Finally, Directive 96/82/EC of December 1996 may also be relevant, which concerns the management of major accidents with implication of dangerous substances.

ii) Legal regime for rail and road transport: Within the UN/ECE, several agreements for transport of dangerous goods by road (ADR), by rail (RID), by inland waterways (ADNR), by sea (IMDG), by air (ICAO-TI) regulate the trans-border shipments between the parties to the agreements (EU and its neighbours). In the case of ADR and RID, Council directives 94/55/EEC and 96/49/EEC requires EU Member States to extend the application of ADR/RID to transports inside the borders of the MS.

Within the EU, the transport of Dangerous Goods by road and rail are governed by Directives 94/55/EEC and 96/49/EEC and soon a Directive for inland waterways will follow. Security measures for dangerous goods for those modes of transport will enter into force on January 2005. These provisions contain general obligations regarding the so-called "high consequences dangerous goods" (e.g. identification of carriers, security during temporary storage, minimum content of a security plan, training and awareness-raising of personnel).

III.3) Physical Protection of nuclear material

Paragraph 3 (b) of UNSCR 1540: *"Develop and maintain appropriate effective physical protection measures".*

a) International legislation

The reference international legislation is the Convention for the Physical Protection of Nuclear Materials (INFCIRC 274, entry into force for the EU Member States on the 6/10/91). The Convention in its current form covers the physical protection of nuclear materials during international transport and storage incidental to international nuclear transport. An amendment of the CPPNM, which will hopefully be adopted in 2005, will cover the physical protection of nuclear materials during domestic use, storage and transport, as well as the physical protection of nuclear installations and nuclear materials against sabotage. The IAEA recommendations (INFCIRC 225) provide more precisions. They classify nuclear materials into three categories in relation to their nature and the quantities. For each category, specific measures have to be applied for the transportation planning, oversight and implementation.

b) National legislations

The parties to the Convention, including the EU Member States and the Community for its own installations, are required to apply the Convention using the recommendations of the IAEA. Modalities vary from one country to another, reflecting the structures of responsibilities and the internal organisations.

The Community is party to the Convention of Physical Protection which contains provision for the physical protection of its nuclear material and facilities but also graded provisions for the physical protection of different types and quantities of related nuclear material.

III.4) Community customs regimes for imports/exports at the borders of the EU

Paragraph 3 (c) of UNSCR 1540: *"To develop and maintain appropriate effective border controls and law enforcement efforts to detect, deter, prevent and combat, including through international cooperation when necessary, the illicit trafficking and brokering in such items in accordance with their national legal authorities and legislation and consistent with international law".* These controls must also include transited and trans-shipped items (paragraph 3 d).

The entry of all goods in the Community (including dual use goods) is subject to customs controls following the provisions of Council Regulation no. 2913/1992 (Community Customs Code) and Commission Regulation no. 2454/1993 (Implementing Provisions to the Community Customs Code).

Within the Member States of the European Union, responsibility for the control of goods is left to the customs services of the Member States. To this end, the Community Customs Code (Council

Regulation no. 2913/1992) and its implementing provisions (Commission Regulation no. 2454/1993) provide for the necessary rules and procedures.

a) Community regime on import/export from/to the EU

The Community customs legislation as such only provides for the procedural framework but not for prohibitions or restrictions with regard to the importation or exportation of nuclear, chemical or biological weapons or related materials.

Following the normal course, goods, which enter the customs territory of the Community, have to be presented to customs and a summary declaration has to be lodged. Within a certain delay they have to be assigned a customs approved treatment or use, which may also be their re-exportation. For goods which are intended to remain in the customs territory of the Community or to transit this territory a customs declaration has to be lodged. For goods, which are going to be exported from the customs territory of the Community a customs, declaration has to be lodged as well.

At any stage, the competent customs authority is entitled to proceed with the necessary controls including physical inspection of the means of transport and the consignments. In cases where a customs declaration has to be lodged, release to the requested customs procedure may only be granted if all requirements deriving from Community or national legislation applicable are complied with.

b) Community customs regime for the control of exports of dual use items

Dual use items are defined in Article 1 of Council Regulation no. 1334/2000 as "items, including software and technology, which can be used for both civil and military purposes, and shall include all goods which can be used for both non-explosive uses and assisting in any way in the manufacture of nuclear weapons or other nuclear explosive devices". Regulation is based on article 133 EC and sets up a Community regime for the control of exports of dual use items and technology. Following the provisions of this Regulation goods covered by its annex may only be exported where a valid export authorisation is presented to the customs office of export.

In practical terms the customs services of the Member States apply a control strategy based on risk analysis for tackling the consignments subjected to control measures. The parameters for the risk analysis are established via analysis of the results of previous controls, external intelligence and other relevant information. This is done in close co-operation with other services concerned such as the authorities responsible for authorisation of exports of material relevant in relation to nuclear, biological or chemical weapons.

In case of a positive result of a control measure, release for the requested customs procedure must not be granted. Depending on the legislation of the Member State the competent customs services proceed with investigation measures with a view to launch a penal procedure or inform the competent enforcement authorities which take the necessary action.

c) Community regime for circulation of dual use items within the Community

Generally, the circulation of goods within the Community is governed by Article 28, 29 and 30 EC, which define the scope of the principle for free circulation of all goods within the Community. Dual use items for which there are exceptions to the single market are listed in Annex IV of Regulation 1504/2004.

In addition to the general exceptions to the principle of free circulation accepted by the case law of the ECJ, Member States, under Article 296 EC, may also provide further limited exceptions to this principle, insofar they are necessary for the protection of the essential interests or their security, in connection with the production of or trade in arms, munitions or war material. It follows from there, that the application within the Community of any international non-proliferation measure leading to a restriction to trade, must be specifically examined. In case such the justification for such measure is not established, an international agreement on non-proliferation should contain a Community clause stating that the Member States will only apply any such measure within the Community if they are not contrary to Community law.

III.5) Link between EU Dual Use Export Control Regulation n°1334/2000 and Resolution UNSCR 1540

a) Paragraph 3 (d) of UNSCR 1540: *"Establish, develop, review and maintain effective national export and trans-shipment controls over such items, including appropriate laws and regulations to control export, transit, trans-shipment and re-export and controls on providing funds and services related to such export and trans-shipment such as financing, and transporting that would contribute to proliferation, as well as establishing end-user controls..."*

Export controls of dual-use items and technologies in the EU Member States are regulated by Regulation (EC) N° 1334/2000. The Regulation defines the basic and legally binding provisions regulating export controls outside the EU and sets the principles of cooperation between the EU Member States licensing authorities. It has been modified several times since its adoption in June 2000 so as to align the EC list of items (whose exports are controlled) on the international export control regimes' decisions (Australia Group for dual use biological and chemical items, Nuclear Suppliers' Group for nuclear items, Missile Technology Control Regime and Wassenaar Arrangemen*). The current list of items controlled by the 25 EU Member States can be found in the Council Regulation (EC) N°1504/2004 which is in force since 30 September 2004 (details in DG TRADE webpage:
http://europa.eu.int/comm/trade/issues/sectoral/industry/dualuse/index_en.htm.).

The Regulation has been published in the Official Journal of the European Union, number L 281 and dated 31 August 2004.

The Member States are responsible for issuing the export licenses with the exception of the Community General Export Authorisation, which is defined by the Regulation 1504/2004 in its

annex II. The Community General Export Authorisation covers most of the items under control except some sensitive items (listed in Annex IV of the Regulation 1504/2004 and in part 2 of Annex II of Regulation 1540/2004) and facilitates trade to a limited number of States defined in part 3 of the Annex II.

The other licenses that Member States issue are defined at national level and can be, depending on the sensitivity of the transaction at stake, individual, global or National General licenses.

The Regulation 1334/2000 binds, under particular circumstances, the Member States to consult each other before issuing licenses to avoid risks of license shopping and undercut.

The Dual Use Regulation 1334 itself does not cover transit nor transhipment of dual-use items but these controls are, in the current situation, of the responsibility of the Member States at national level. However, the strengthening of controls of dual-use goods in transit or being transhipped is currently being examined

The Regulation does not cover the activity of brokering but covers all exporters as defined in art 2c (either natural or legal person) of a dual use item (listed and, in cases provided by art 4 and 5, not listed) based in the EC territory.

A report by the European Commission, on the implementation of the Dual Use export control Regulation, to the European Parliament and the Council is available on the DG TRADE website mentioned earlier.

Paragraph 6 of UNSCR 1540: *"Recognises the utility in implementing this resolution of effective national control lists and calls upon all Member States, when necessary, to pursue at the earliest opportunity the development of such lists".*

As explained above, the EU list (currently Regulation 1504/2004) is based on the control lists adopted by the four international export control regimes and is regularly updated. The EU list is used in the 25 EU Member States and already also by other countries. It is worth noting in addition that the EC Regulation's articles Article 4 and 5 allow the Member States at national level to impose prior authorisation for exports of non listed items if the conditions set in these above mentioned articles are met.

Paragraph 8 (d) of UNSCR 1540: *"To develop appropriate ways to work with and inform industry and the public regarding their obligations under such laws".*

The European Commission organises regular meetings with industry in conformity with provisions of Regulation 1334/2000.

b) Paragraph 3 (d) *in fine* of the paragraph *("... and establishing and enforcing appropriate criminal or civil penalties for violations of such export control laws and regulations")*

Art 19 of the Reg. 1334/2000 already provides for "effective, proportionate and dissuasive sanctions" to be put in place at national level for the violation of export control rules established in the Regulation. This provision already implements in our view the Article 3 d) *in fine* of the UNSCR 1540. The mention of "effective, proportionate and dissuasive sanctions" leaves flexibility and freedom of choice to Member States for implementation. It is synonymous to the "appropriate criminal or civil sanctions" provided for by the resolution. In fact the survey done in the WP Dual Use on the implementation of this article has revealed that all EU member States in the enlarged EU have adopted the two types of sanctions (administrative and criminal) to implement article 19.

---

(1) Council Decision of 23 October 2001 establishing a Community mechanism to facilitate reinforced cooperation in civil protection assistance.interventions 2001/792/EC, Euratom
(2) 15 June 2004